

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-217492 **DATE:** February 4, 1985
MATTER OF: Northwest Maintenance, Inc.

DIGEST:

Agency properly awarded a small business set-aside contract to a firm determined to be small by an SBA Regional Office where the award was made after the Regional Office's decision but prior to the agency's notification that the protester appealed to the SBA's Office of Hearings and Appeals for a final ruling. Whether options under this contract should be exercised is a matter to be resolved by the agency in accordance with applicable regulations.

Northwest Maintenance, Inc. (Northwest), protests the award of a contract to DESCO, Inc., the low bidder under invitation for bids (IFB) No. N62474-84-B-9003, a small business set-aside issued for maintenance of military family housing at the Naval Air Station, Adak, Alaska (Navy), for 1 year with 3 option years.

We summarily deny the protest.

On August 27, 1984, the Seattle Regional Small Business Administration (SBA) Office rejected a size protest in which Northwest argued that DESCO was affiliated with another business thereby making DESCO a large business. The decision of the SBA Regional Office, that DESCO is a small business, was timely appealed on September 5, 1984, to SBA's Office of Hearings and Appeals. Northwest notified the Navy of its appeal by certified letter received September 7, 1984. On September 6, 1984, however, the Navy awarded the contract to DESCO. Northwest's appeal to SBA resulted in a final decision on November 28, 1984, that DESCO was a large business.

On December 5, 1984, Northwest requested that in view of the SBA's final determination, the Navy terminate DESCO's contract and make award to Northwest, or, in the alternative, resolicit the procurement. The Navy responded to Northwest's request stating:

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"As this Office has been advised by the Small Business Administration that the contract can remain in force, it is not anticipated that any action will be taken affecting this procurement. Information is being gathered at this time as to the effect on the option year(s)."

Northwest argues that the Navy, by relying on advice from the SBA, abdicated its responsibility to determine whether DESCO's certification as a small business was made in good faith or not. We disagree.

The Navy made award to DESCO based upon the determination of August 27 by the SBA Regional Office that DESCO was a small business. Such determination was binding on the contracting officer. See Federal Acquisition Regulation, § 19.301(c), 48 Fed. Reg. 42,102, 42,246 (1983) (to be codified at 48 C.F.R. § 19.301(c)). The award, made in September 1984, months before the SBA's Office of Hearings and Appeals reversed the determination of the Seattle Regional SBA Office, and before the Navy was notified of Northwest's appeal of the SBA Regional Office decision to SBA's Office of Hearings and Appeals, resulted in a valid contract. See FAR, § 19.302(g)(2), 48 Fed. Reg. 42,102, 42,247; John C. Holland Enterprises, B-216250, Sept. 24, 1984, 84-2 C.P.D. ¶ 336. Accordingly, the contracting officer was not required to determine, after the SBA final decision that DESCO was large, whether DESCO's certification as a small business was made in good faith or not.

Northwest argues that even if the award was not improper, the Navy should be precluded from exercising the options under the contract with DESCO. Of course, the exercise of this option is a matter to be resolved in accordance with applicable regulations. See FAR § 17.207, 48 Fed. Reg. 42,102, 42,237; Triple A Shipyards, B-213738, July 2, 1984, 84-2 C.P.D. ¶ 4; Gallegos Research Corporation--Reconsideration, B-209992.2, B-209992.3, Nov. 21, 1983, 83-2 C.P.D. ¶ 597. Although this contract should not be continued as a small business contract, the exercise of an option is not precluded if done in accordance with applicable regulations. Triple A Shipyards, B-213738, supra; Gallegos Research Corporation--Reconsideration, B-209992.2, B-209992.3, supra. At this time, the propriety of any option exercise is premature.

The protest is denied.

for Seymour E. Friedman
Comptroller General
of the United States